HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 11393 OF 1996

BETWEEN

M/s Classic Construction Company,
Hyderabad

.....**Petitioner**

And

Member Secretary, APSEB, Hyderabad & others

.....**Respondents**

:: O R D E R::

Counsel for the Petitioner : Shri J.R. Manohar Rao

Counsel for the Respondents : Smt. Rachana

Dated: 26.07.2006

Article 14 of the Constitution of India, which has been aptly described by the Supreme Court in **E.P. Royappa v. State of T.N.**[1] as genus of the doctrine of equality, ordains that the State

shall not deny to any person equality of law or equal protection of the law within the territory of India. Articles 15 and 16 have been treated as two species of the doctrine of equality. In last 56 years, the Supreme Court has consistently given a wide meaning to the doctrine of equality and by now it is well settled that every State action, legislative as well as executive, is open to be scrutinized by the Courts on the anvil of the doctrine of equality. Expansion of this doctrine in **Maneka Gandhi v. Union of India**[2] and **Roshanlal v. International Airport Authority of India**[3] has brought within its fold every arbitrary action of the State and its agencies and instrumentalities.

Broadly speaking, the doctrine of equality enjoins upon the State to treat all similarly situated persons equally with reference to the subject matter of law and executive actions. However, keeping in view the directive principles of State policy, the Courts have also evolved a subsidiary doctrine, which is called the doctrine of classification. This doctrine can be invoked by the Court for upholding the legislative and executive action of the State if it is shown that the classification made between apparently similarly situated persons as substantial and real and the same has rational relation or nexus with the object sought to be achieved. A lucid explosion of law on this subject can be found in **Mohammad Shujat Ali v. Union of India**[4]. In that case, a Constitution Bench of the Supreme Court referred to the earlier judgment of another Constitution Bench in **State of Jammu & Kashmir v. Triloki Nath Khosa**[5] and laid down the following propositions:

> "24. We thus arrive at the point at which the demand for equality confronts the right to classify. For it is the classification which determines the range of persons

affected by the special burden or benefit of a law which does not apply to all persons. This brings out a paradox. The equal protection of the laws is a "pledge of the protection of equal laws." But laws may classify. And, as pointed out by Justice Brewar, "the very idea of classification is that of inequality". The court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated. "The Equal Protection of the Laws", 37 California Law Review, 341.

25. But the question is : what does this ambiguous and crucial phrase "similarly situated" mean? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things

similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.

26. But we have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the legislature does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in State of Jammu and Kashmir v. Triloki Nath Khosa, (1974) 1 SCC 19 = (AIR 1974 SC 1 = 1974 Lab IC 1) "the guarantee of equality will be sub-merged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments." Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to

the equal protection clause must therefore, be guided by the words of caution uttered by Krishna Iyer, J., in (1974) 1 SCC 19 = (AIR 1974 SC 1 = 1974 Lab IC 1).

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

I have referred to the above stated general proposition of law because the issue which calls for adjudication in this petition filed by M/s. Classic Construction Company is whether B.P.Ms.No.263, dated 28.2.1996 issued by Andhra Pradesh State Electricity Board (for short, 'the Board') and consequential letter dated 17.5.1996 issued by Assistant Divisional Engineer, Distribution (VII), City II, Barkatpura, Hyderabad (respondent No.4) are discriminatory and as such, the same are liable to be quashed.

The petitioner is engaged in construction activities. In 1995, it applied for release of electricity connection for construction of flats at Qutbiguda, Hyderabad. The Superintending Engineer vide his Memo dated 19.12.1995 sanctioned the connection and directed that Rs.2,75,100/- be collected from the customer before issue of work order. After one month, the Divisional Engineer issued letter dated 23.1.1996 that entire material is not readily available at central stores. Thereafter, the Assistant Divisional Engineer issued letter dated 6.2.1996 requiring the petitioner to pay Rs.24,515/- towards service line charges. Accordingly, representative of the petitioner deposited the desired amount through Demand Draft dated 29.2.1996. As a sequel to this, the competent authority issued the work order.

After about three months, respondent No.4 issued letter dated 17.5.1996 requiring the petitioner to deposit Rs.91,775/- towards service line charges.

The petitioner has questioned paragraph 3 of B.P.Ms.No.263, dated 28.2.1996, which was published in Andhra Pradesh Gazette Part II–Extraordinary, dated 28.2.1996, whereby development/ service line charges were revised, and the consequential demand made by respondent No.4 by contending that the revised charges cannot be made applicable to it because the Superintending Engineer had accorded sanction more than two months prior to revision of the development/service line charges. In paragraph 5 of the affidavit filed by Managing Partner of the petitioner namely, Sri M.A. Quader, the following averments have been made:

> "5. It is submitted that B.P.Ms.No.263, dated 28.2.1996 ws issued with regard to the revised service line charges and developmental charges or the new low tension and high tension services. It is submitted that according to para 3 of B.P.Ns.No.263, the rates of developmental charges and service line charges shall be applicable for those who pay developmental charges as mentioned in it and service line charges on or after the date of this order. It is submitted that this condition is illegal, bad and arbitrary. Further the respondents ought to have implemented the B.P.Ms.No.263, if so necessary, only insofar as the case where the work was not sanctioned by the date of issue of B.P.Ms.No.263. It is submitted that in the letter dated 6.2.1996, I was directed to pay the amount of Rs.24,515/-. In the said letter, the respondents have not indicated any date before which the amount should be paid. However, after receiving the letter dated 6.2.1996, immediately i.e., on 29.2.1996, I have deposited the said amount through D.D. I was not aware about the issuance of B.P.Ms.No.263. It is submitted that if I would have paid Rs.24,515/- on 27.2.1996, this B.P.Ms.No.263 would not have applied in my case. There was no difference between the two days for payment of the charges. It is submitted that it will be reasonable to prescribe that all orders issued prior to 28.2.1996 will not come under the purview of B.P.Ms.No.263, dated 28.2.1996. Therefore, the

B.P.Ms.No.263 particularly para 3 is arbitrary and discriminatory. Therefore, the entire B.P.Ms.No.263 or at least paragraph 3 should be set aside."

In the belated counter affidavit filed by Sri S.Ravi Kumar, Assistant Divisional Engineer (Operation) of Central Power Distribution Company Limited (affidavit was filed on 11.7.2006), it has been averred that while sanctioning supply of electricity to the petitioner, the Superintending Engineer had asked it to pay Rs.2,75,102/- as service line and development charges, but the said amount was not paid. It has been further averred that as per the existing practice in the erstwhile Board, the petitioner was asked to pay Rs.24,515/- towards supervision charges and permission for execution of the work by supplying material at the petitioner's cost was granted. Accordingly, the petitioner paid Rs.24,515/- on 29.2.1996. In the meanwhile, the Board revised the existing service line and development charges payable by prospective consumers for new and additional loads. This was done by the Board keeping in view the provisions of Sections 49 and 79(i) of the Electricity (Supply) Act, 1948. The revised rates were notified in Gazette dated 28.2.1996. According to Sri Ravi Kumar, the petitioner is bound to pay the revised service line and development charges because, it had failed to deposit the requisite amount in terms of sanction letter dated 19.12.1995 issued by the Superintending Engineer.

After going through the averments contained in the affidavit of Shri Ravi Kumar, I asked Smt. Rachana, learned counsel for the respondents to show the original record on the basis of which notification dated 28.2.1996 had been issued so that the Court could find out the reasons for making the revised rates of development/service line charges applicable to the petitioner and

other similarly situated persons in whose favour sanction had been accorded prior to 28.2.1996 without fixing any time limit for deposit of the service line/development charges. In reply, learned counsel stated that despite the efforts made by the officers of the Company, the relevant record could not be traced.

In view of the above, the Court is left with no option but to decide the writ petition on the premise that the respondents have failed to disclose the rational reason or justification for dividing the prospective consumers in whose favour sanction for release of connection had been granted before 28.2.1996 into two sub-groups of those who had deposited the development and service line charges before 28-2-1996 and those who did not do/could not do so.

While Sri J.R. Manohar Rao argued that the decision of the Board to levy revised service line and development charges on the prospective consumers like the petitioner is wholly arbitrary, irrational, discriminatory and violative of Article 14 of the Constitution, Smt. Rachana argued that no discrimination has been practised by making the revised rates applicable to the prospective consumers like the petitioner. According to her, the differentiation made between those who had deposited service line and development charges before 28.2.1996 and those who did not do so is reasonable and does not call for Court's interdiction.

I have given serious thought to the entire matter.

Paragraph 3 of Notification dated 28.2.1996 , which is subject matter of challenge in this petition reads as under:

> "3. These rates of Development charges/Service Line charges shall be applicable for those who pay Development charges and Service Line charges on or after the date of this order."

What the above reproduced paragraph does is to divide the

class of prospective consumers in whose favour sanction may have been granted before 28.2.1996 into two classes. One class comprises of those who had paid development charges/service line charges before 28.2.1996 and the other comprises of those who did not pay development and service line charges up to 28.2.1996. The decision of the respondents could have been treated rational, if the persons making application for providing service connection were divided into two groups on the basis of date of sanction of the applications or they had been classified as defaulters and non-defaulters. It could also be possible to approve the decision of the respondents if it was shown that the competent authority had issued notice to the petitioner and similarly situated persons indicating them that development charges/service line charges are required to be deposited by the specified date. However, the fact of the matter is that no such intimation was given to the petitioner. It is neither the pleaded case of the respondents nor any material has been produced before the Court to show that while sanctioning service connection in favour of the petitioner, the Superintending Engineer had fixed any time schedule for deposit of the service line charges. Rather, the un-controverted facts brought on the record of the writ petition show that at one stage the Divisional Engineer (Stores) had shown his reluctance to execute the work on account of non-availability of the material at the central stores. Subsequently, he asked the petitioner to deposit only a small fraction of the total cost of the service line charges and development charges. The petitioner deposited the requisite charges within the stipulated time. Therefore, it cannot be said that the petitioner had failed to deposit the development/service line charges on the due date. As a sequel to this, it must be held that the petitioner cannot be classified as defaulter and made liable to

pay the revised service line charges and development charges.

In **D.R. Nim v. Union of India**[6], the Constitution Bench of the Supreme Court considered the constitutionality of order dated 28.5.1955 issued by the Government of India for reckoning the services for promoted Indian Police officers from 19.5.1951 and declared that the date was artificial and arbitrary. In paragraph 6 of the judgment, the Supreme Court observed as under:

> "6. It would be noticed that the date, May 19, 1951, to begin with, had nothing to do with the finalisation of the Gradation List of the Indian Police Services because it was a date which had reference to the finalisation of the Gradation List for the I.A.S. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in Para. 9 of the affidavit, reproduced above. This date was apparently chosen for the I.A.S. because on this date the Gradation List for all the earlier persons recruited to the Service had been finalised and issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. B. R. L. Iyengar, the learned counsel for the appellant, strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect. It further appears from the affidavit of Mr. D. K. Guha, Deputy Secretary to the Government of India, Ministry of Home Affairs, dated December 9, 1966, that "the Government of India have recently decided in consultation with the Ministry of Law that the Ministry of Home Affairs letter No. 2/32/51-AIS, dated the 25th August 1955, will not be applicable to those SCS/SPS officers, who were appointed to IAS/IPS prior to the promulgation of IAS/IPS (Regulation of Seniority) Rules, 1954, and the date of the issue of the above letter in their earlier continuous officiation was approved by the Ministry of Home Affairs and Union Public Service Commission." It further appears that "in the case of Shri C. S. Prasad also, an IPS officer of Bihar, a decision has been taken to give the benefit of full

continuous officiation in senior posts and to revise his year of allotment accordingly." But, it is stated that as Shri Nim was appointed to IPS on the 22nd October 1955, i.e., after the promulgation of IPS (Regulation of Seniority) Rules, 1954, and after the issue of letter, dated 25th August 1955, his case does not fall even under this category." The above statement of the case of the Government further shows that the date, May 19, 1951, was an artificial and arbitrary date having nothing to do with the application of the first and the second proviso to R. 3 (3). It appears to us that under the second proviso to R. 3 (3) the period of officiation of a particular officer has to be considered and approved or disapproved by the Central Government in consultation with the Commission considering all the relevant facts. The Central Government cannot pick out a date from that - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso."

In **Jaila Singh v. State of Rajasthan**[7], a Division Bench of the Supreme Court considered the constitutionality of Rajasthan Colonisation (Rajasthan Canal Project Pre-1955 Temporary Tenants Government Land Allotment) Conditions 1971. One of the points which was raised on behalf of the petitioners before the High Court, though unsuccessfully, was that there are no nexuses for dividing pre-1955 and post 1955 tenants with reference to the cut off date i.e. 15.10.1955 fixed by enforcing the provisions of the 1955 Act. While reversing the decision of the High Court and striking down the cut off date, the Supreme Court observed as under:

"There is no nexus between the pre-1955 Conditions and post-1955 Rules and the Rajasthan Tenancy Act which came into force on 15-10-1955. The reference to Sections 15 and 15A of the Rajasthan Tenancy Act in deciding the questions about validity of the conditions and the rules is wholly irrelevant. The length of occupation of the lands

does not provide any proper criterion for the distinction between pre-1955 and post-1955 tenants.

The difference in the period of occupation between the pre-1955 and post-1955 tenants is not of such an extent as to justify allotment of larger extent of land to the pre-1955 tenants than to the post-1955 tenants nor for the discrimination even among pre-1955 tenants between those holding more than 25, bighas and those holding less than 25 bighas."

In view of the above discussion, I hold that the decision of the Board to apply paragraph 3 of Notification dated 28.2.1996 to the petitioner's case is arbitrary, discriminatory and violative of right to equality guaranteed under Article 14 of the Constitution. Consequently, the writ petition is allowed and the demand of revised rates of service line charges and development charges raised by the respondents against the petitioner is quashed.

Learned counsel for the parties gave out that the petitioner has already paid the admitted amount and that in furtherance of interim order passed by this Court the petitioner deposited the requisite amount. In this view of the matter, the petitioner shall not be required to pay anything more and above what has already been deposited. If it has paid excess amount, then the petitioner may apply for refund of the same. In that event, the competent authority of Central Power Distribution Company Limited shall be entitled to adjust the excess amount in the future bills of the petitioner.

G.S.SINGHVI, CJ

ksld
26.07.2006

[1] AIR 1974 Supreme Court 555

[2] AIR 1978 Supreme Court 597

[3] AIR 1981 Supreme Court 597

[4] AIR 1974 Supreme Court 1631

[5] AIR 1974 Supreme Court 1

[6] AIR 1967 SC 1301

[7] AIR 1975 Supreme Court